

**MINUTES OF THE MEETING  
OF THE  
BOARD OF PHYSICAL THERAPY**

**May 23, 2005**

**CALL TO ORDER**

Wayne Stuberg, Chairperson, called the meeting of the Board of Physical Therapy to order at 9:05 a.m., May 23, 2005, in Conference Room Lower Level D, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska. The meeting was duly publicized by distribution of the Notice of Meeting and Agenda ten (10) days prior to the meeting and posting the agenda at the entrance of the Department of Health and Human Services Regulation and Licensure at least twenty-four (24) hours prior to the meeting.

**Roll Call**

The following Board members, HHSS staff and visitors were present at the meeting:

Wayne Stuberg, Chairperson  
Karen Brown, Vice-Chair (Entered at 9:08 a.m.)  
Susan Jeffrey, Secretary  
Raymond Frew, Lay Member  
  
Diane Hansmeyer, Section Administrator  
Delores James, Credentialing Coordinator  
Mike Grutsch, Program Manager for Investigations  
Pat Lempke, Investigations  
Heather Jenny, President NPTA (Entered 9:43 a.m.)  
Patrick Gross, Physical Therapist  
Amy Lamb, Occupational Therapist (Entered 10:45 a.m.)  
Chris Larson, FSBPT (Entered 9:43 a.m.)

**Adoption of the Agenda**

Jeffrey moved, seconded by Frew, to approve the agenda as presented. Voting Aye: Stuberg, Jeffrey and Frew. Voting Nay: none. Brown, absent and not voting. Motion carried.

**Approval of Minutes**

Jeffrey moved, seconded by Stuberg, to approve the minutes of the February 14, 2005 board meeting. Voting Aye: Jeffrey, Frew and Stuberg. Voting Nay: none. Brown, absent and not voting. Motion carried.

**INVESTIGATIONAL REPORT(S) (Closed Session)**

Stuberg moved, seconded by Jeffrey, to go into closed session at 9:08 a.m. for the purpose of hearing investigational report(s) and to protect the reputation of individuals. Voting Aye: Brown, Stuberg, Jeffrey and Frew. Voting Nay: none. Not voting: None. Motion carried.

**Out of Closed Session**

Brown moved, seconded by Stuberg, to come out of closed session at 9:43 a.m. Voting Aye: Stuberg, Jeffrey, Frew and Brown. Voting Nay: none. Not voting: None. Motion carried.

Gross left the meeting at 9:20 a.m.  
Grutsch and Lempke left the meeting at 9:43 a.m.

### **LICENSURE APPLICATIONS**

There were no licensure applications

### **LEGISLATION**

#### **LB 445**

Stuberg gave an update on the status of LB 445 and stated that a decision was made not to take it to the legislature after a meeting requested by Senator Jensen's office. Stuberg attended the meeting along with Heather Jenny, President of the Nebraska Physical Therapy Association, Mr. Santema; Senator Jensen's Legislative Aide and other individuals representing several agencies.

At this meeting Mr. Santema reported that as far as the Department of Health and Human Services and Senator Jensen's office were concerned that LB 445 was a re-codification or basically a re-definition of the practice of physical therapy in the State of Nebraska and that LB 445 did not change the scope of practice of PT. Some of the concerns expressed at this meeting were about the utilization of paraprofessionals, who are aides as defined by the practice act, providing service in the public schools. There is a program that is called "Medicaid in the Public Schools" that was developed in 1994 for the purposes of allowing billing for children who are Medicaid eligible and receiving special education services. The major concern of Lincoln Public Schools was that LB 445 was going to threaten their ability of continuing to bill for these services. A statement was made that physical therapy service was being provided by the paraprofessionals at a number of schools in the LPS District without having physical therapists on site when the services were being provided and that they needed those services in order to be able to provide physical therapy to the students. LPS wanted to be assured that any language that is in LB 445 would provide for general supervision of the paraprofessional, under the requirement they could continue to provide physical therapy services in an educational setting.

Jenny spoke about paraprofessional services being billed under physical therapy to the MIPS program. She stated that there are inconsistencies between chapter 25 defining special education services, and the statutes and regulations of physical therapy as to how an aide can and should be utilized in the provision of physical therapy services and also as it relates to Medicaid.

Stuberg explained that the Nebraska Rules and Regulations, 172 NAC 137-008 6 and number 2 list activities that an aide is allowed to perform. He said that he does not have specific information about the activities the paraprofessionals are doing, however 6a requires direct supervision when physical therapy services are offered. The second issue under 6b (2) is that an aide or paraprofessional is only allowed to monitor an exercise program of children receiving special education. Monitoring means that the paraprofessionals are not allowed to do hands on health care. Also, complex therapeutic activities are not to be performed by paraprofessional based on the rules and regulations. Stuberg stated that there are two issues that are of major concern and directly related to the Physical Therapy Statutes and they are: 1) Supervision requires onsite supervision; and 2) the scope of practice, or duties paraprofessionals are allowed to perform.

Jenny discussed reimbursement for paraprofessional services and MIPS practices. She said that there are two core issues that need to be reviewed and they are; 1) who can provide physical therapy; and 2) is it payable. She said that it is the understanding of some officials in the public school system that paraprofessionals are paid from money set aside for their services but what is happening is that they are paid for physical therapy services billed under the physical therapists license.

Jenny gave the Board members copies of the Medicaid Plan, which reads “that when a bill is submitted to Medicaid it is only reimbursable under the PT’s, OT’s and SLP’s licenses”. She stated that the problem is that if it is being billed under one of the three professions’ social security number the therapist becomes responsible.

Jenny said that the rules and regulations governing the State Medicaid Plan requires that PT, OT and SLP services be provided under the direction of a physical therapist, occupational therapist or a speech language pathologist and she was okay with this because it is in agreement with the physical therapy regulations 172 NAC 137. She is concerned that some school districts are submitting bills in the name of physical therapists and the physical therapist does not know that they are being submitted under his/her license.

Stuberg called the Board’s attention to the documents referenced by Jenny. Attachment A. 42 CFR - Part 440, Federal Register, dated May 28, 2004; Attachment B. Chapter 25 of 471 of the Nebraska Administrative Code, which are the special education school based services and these rules set up the MIPS program; and Attachment C. 471 NAC 17, which is physical therapy services under the Medicaid program. He mentioned that it is with these documents that the inconsistencies occur.

Stuberg referenced the State of Nebraska Medicaid in Public School Procedures Manual, page III. 2 (Attachment D), which reads as follows; “In the Nebraska MIPS program, a provider is the school district. Even though the school district may not employ the individual(s) providing the service, they are still referred to as the “provider of this program”. In the same procedures manual A “provider” (I.E., school district), for the purposes of the MIPS program, is separate from a “direct service provider”. A direct service provider is the actual therapist who conducts face to face therapy with a child. This person may either be employed or contracted by a school district, ESU or cooperative.

The Board voiced concern about the discrepancies used to define direct supervision and the use of paraprofessionals to perform tasks that are within the scope of practice of licensed physical therapists.

In order to get the problems before the department heads of the agencies administering the programs, Stuberg asked Hansmeyer to identify individuals to send letters of concern to. The objective of this letter is to let the administrators know of the problems and attempt to get everyone involved in solving these problems.

Hansmeyer suggested that the letter be sent to Chris Peterson, Secretary of HHSS Policy Cabinet. Copies of this letter will go to heads of the several departments and individuals involved in the decision making process.

The letter will include the facts that there are inconsistencies between chapter 17 and chapter 25 of the MIPS Guidelines for Services in The Schools, 172 NAC 137, and the Physical Therapy Statutes regarding the utilization of paraprofessional services.

**Motion**

Stuberg moved, seconded by Jeffrey, to send a letter of concern to Chris Peterson, HHSS Policy Secretary and Interim Director of the Department of Regulations and Licensure. With copies of the letter to Douglas Christensen, Commissioner of Education, Nancy Montanez, Director of the Department of Services, Dick Nelson, Director of the Department of Finance and Support, and the Nebraska Physical Therapy Association concerning the inconsistencies between Chapter 25, Chapter 17 of the MIPS Guidelines and 137 NAC 137. Voting aye: Jeffrey, Brown, Stuberg and Frew. Voting nay: None. Not voting: None. Motion carried.

Stuberg will draft the letter and send it to Hansmeyer and other board members for feedback and approval before it is sent out.

Amy Lamb left the meeting at 10:45 a.m.

Recess 10:45 a.m.

Reconvened at 10:55 a.m.

**FSBPT 2005 BUDGET (Attachment E)**

Hansmeyer stated that one of the issues with the Federation budget was the cash reserve issue and she talked with Larry Wilkerson, Chief Financial Officer of the Federation and asked him about the accounting standards that are used for the reserve fund. Mr. Wilkerson responded by saying that there is an accounting standard that they use and that funds should be maintained at no less than 50% of the operating cost with the goal of 100% for one year of operation. He explained that the Federation has conducted a survey of the Peer organization and similar organizations and their goal is also 100%. He said that the reason for using this method is that people will see a cash build up and they want to operate at a loss and eat into the reserve.

Mr. Wilkerson mentioned a book written for associations that sets out that same standard. He said that the Federation is at the 100% goal. He thinks the Federation and member boards should be happy that they are actually at that goal.

Stuberg stated that his concern is when he attended the combined sessions meeting of the APTA last February he was invited to sit in on the academic administrators special interest group, which is a group made up of program directors from OT schools around the country. There was a significant amount of discussion between the Federation and the American Physical Therapy Association about the amount of fees that are being charged for the licensure examination and the passing rate of the examination.

Stuberg stated that during the meeting a motion passed, asking the APTA Board of Directors to consider alternative examination processes or the ownership of the exam that was passed by the academic administrators group. He said that he did not know whether or not this would be something that would be handled internally as far as the Board of Directors of the APTA is concerned or what would happen. Part of the discussion was basically to have a competing organization of the Federation. Stuberg felt that this would be very unwise because it needs to be a separate entity made up of people with many skills and talents.

Stuberg announced that he had been asked to serve on the Finance Committee of the Federation of State Boards of Physical Therapy.

**CONTINUING COMPETENCY PILOT (Attachment F)**

Chris Larson, staff of the Federation of State Boards of Physical Therapy, spoke on the continuing competency pilot, a program that was approved by the Federation Board of Directors in August of 2000. CAPPS stands for Continuing Assessment of the Physical Therapist Professional Standards, which results in public safety. She stated that this project has the potential to create a measurement tool for Boards to evaluate continuing competency. Most state statutes require licensees to maintain continuing competency, but they want to know how to do it.

CAPPS includes the development of a professional portfolio, the completion of a self-assessment and the maintenance of a learning tracker. CAPPS is one component of FSBPT continued competence program.

The CAPPS project contains a sub-evaluation for physical therapists re-entering practice after the license has lapsed or has not been renewed. The process required by the Board to help determine areas that need remediation. If someone needs to go through the remedial process, they could take the sub-evaluation to determine where remediation is needed. The sub-evaluation could also be used for physical therapist that is changing areas of practice.

Larson explained why the Federation is committed to the development of a national framework that state licensing boards may use to assess continuing competence of physical therapy practitioners and the importance of developing standards that articulate a measurable degree of required performance.

She gave the following assumptions for developing the standards:

- Physical therapists are bound by a code of ethics.
- physical therapists are self-regulating
- Physical therapists maintain currency by participating in life-long learning. Life-long learning includes development of knowledge, skills and abilities in order to meet current standards of practice.
- Physical therapists are committed to delivering quality patient care services.
- Physical therapists are an integral part of the health care delivery team.
- Physical therapists are responsible for all aspects of physical therapy services including those provided by assistive personnel under the direction of the physical therapist.

Brown wanted to know the difference between the CAPPS project and specialty examinations. Larson responded that the information presented in this project is entry level because if the project went beyond entry level the Federation would be in the business of professional development. Most specialty examinations are not entry level. The CAPPS project guarantees quality and safety. She stated if you look back in history the public health service basically said instead of endorsing a single method of continuing education that we should look at the development of a more sophisticated approach.

Larson explained that the federation is committed to the development of a national framework that state licensing boards may use to assess continuing competence of physical therapy practitioners.

As part of the commitment, it is important to develop “standards” that articulate a measurable degree of required performance. The standards chosen will be used to determine the level of performance to which licensees will be held accountable for ongoing practice.

Larson stated that one of the reason that the Federation is asking Nebraska to consider using the CAPPS project is because Nebraska has already gone through the development of the Jurisprudence examination, and because of the way that the statutes are written in this state CAPPS could be used both as an initial requirement for licensure and for renewal.

#### **Motion On the CAPPS Project**

Stuberg moved, seconded by Jeffrey, to sponsor or cosponsor the CAPPS Project with the Nebraska Physical Therapy Association. The Board recommends two (2) hours of continuing education credit for the lecture presentation and four (4) hours under management for the professional portfolio for licensure renewal. Voting aye: Stuberg, Brown, Jeffrey and Frew. Voting nay: None. Not voting: None. Motion carried.

The Board asked Hansmeyer to check on the Board sponsoring this program for continuing education and coordinate it with the Nebraska Physical Therapy Association.

Jenny left the meeting at 12:15 p.m.

#### **ULL REWRITE CONCERNS**

Hansmeyer stated that each person was sent information on The Uniform Licensing Law rewrite. The proposed changes did not go into legislation this year because there were some things that the Attorney General did not agree with. Hansmeyer explained that there might be proposed amendments that each profession is not in agreement with, therefore, she asked Board members to review the information in order to make sure it will work for their profession.

The Department plans on having a final version for introduction by January of 2006.

There were not any practice concerns expressed about the rewrite of Uniform Licensing Law at the time of the board meeting.

#### **MISSIONS AND OBJECTIVES (Attachment G)**

##### **The Credentialing Division**

Hansmeyer updated the Board on the missions and objectives of the Credentialing Division. She discussed the outcomes and measures for consumers, licensees, licensing boards, contractors, private or governmental agencies, provider associations, and federations and councils.

Hansmeyer stated that a survey is being developed and would be sent to the Board. The focus of the survey is “Does the Credentialing Division provide you with the tools necessary to do your job as a board member?”

##### **The Board of Health**

Hansmeyer reviewed the Board of Health’s Mission and Goals with the Board. She stated that when the Credentialing Division developed their missions and objectives they based much of it on the Board of Health document. This document was given to the board for informational purposes only.

Brown asked for a board retreat because she feels that issues such as LB 445, the MIPPS issues, ULL changes and suggested changes of the PREPP meetings get the attention they deserve.

Stuberg suggested that the next board meeting be an all day meeting, with business in the morning and the retreat for strategic planning in the afternoon.

The Board will review the latest version of LB445 at their next meeting to see if they agree with the changes.

## **SCOPE OF PRACTICE ISSUES**

### **Use of Topical Medications**

Stuberg referenced a letter (Attachment H) sent to him by a physical therapist to get his opinion on the use of topical medications in PT modalities (iontophoresis and phonophoresis). The individual wanted to know if the topical medications administered with these modalities is within the physical therapy scope of practice. Stuberg responded to the individual with the following statement: There is a Board policy and this is within the scope of practice of a physical therapist. However the statutes and regulations are silent on this issue and the Board understands that the policy is an advisory opinion, but that is how the Board would vote on a complaint against a therapist. The final decision would be up to the Department and the Attorney General as to whether this function is within the scope of practice of physical therapy.

Hansmeyer also had the same question from an individual and related the same information to her.

### **PT's and Supplemental OXYGEN (02)**

The Board discussed a question (Attachment I) asked by Mike Bryant and Mary Bunger, as to whether physical therapist or techs are able to change tubing from wall 02 to a portable tank and vice versa should a patient on oxygen therapy need to be transferred by wheelchair to the physical therapy department.

### **Motion on Supplemental OXYGEN (02)**

Stuberg moved, seconded by Brown, that the use of supplemental oxygen be placed in the Board's policies as being within the scope of practice of physical therapy following guidelines as provided by primary care physician and facility. Voting aye: Jeffrey, Stuberg, Frew and Brown. Voting nay: None. Not voting: None. Motion carried.

The Board will inform Mr. Bryant and Ms. Bunger that the use of supplemental oxygen as a part of patient care is within the scope of physical therapy practice. Tasks such as insertion and removal of the cannulas and adjustment of the rate of flow as per physician direction and facility guidelines are permitted.

### **Can Physical Therapists Disconnect Intravenous Lines**

Mary Mitchell asked if physical therapist could disconnect intravenous lines for the purpose of getting the bag of IV fluids through the arm of patient's gown while getting dress.

The board has a policy and this function is within the physical therapist scope of practice. Please see physical therapy board meeting minutes of November 21, 1996 (Attachment J).

### **OLD BUSINESS**

There was no old business

### **NEW BUSINESS**

#### **FSBPT Update**

Stuberg made a statement earlier in the meeting about serving on the FSBPT Finance Committee.

Hansmeyer stated that the new passing standard for the licensure examination is .95 in logic, on the NPTE PT scale 1.15 logit is lower than the previous standard of 1.10. The equated passing score will remain the same 600. The first time pass rate will be 80 or 86%. Stuberg will email the board members information on how to read this report.

#### **Renewal Audit**

Jeffrey moved, seconded by Stuberg, to audit 13% of physical therapists and physical therapist assistants at licensure renewal time. Voting aye: Frew, Brown, Stuberg and Jeffrey. Voting nay: None. Not voting: None. Motion carried.

Jeffrey left the meeting at 1:50 p.m.

#### **Use of Assistive Personnel**

**The Board decided to table this item until LB 445 becomes law.**

#### **PT Related Tasks**

This subject was removed from the agenda

#### **Board of Health Information**

Hansmeyer announced that the Board of Health is on the Website.

#### **School Reports**

Hansmeyer gave the school examination report (Attachment K).

#### **Nebraska Law & National Exam Score Summary**

Hansmeyer gave the Nebraska Law and National Exam Score Summary for informational purposes only (Attachment L).

### **MISCELLANEOUS**

The next Board meeting will be held on August 15, 2005 at 9:00 a.m.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 2:14 p.m.

Respectfully submitted,

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Susan Jeffrey, Secretary